

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	
	:	Chapter 11
FAIRWAY GROUP HOLDINGS CORP., et al.,	:	
	:	Case No. 20-10161 (JLG)
	:	(Jointly Administered)
Debtors	:	
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VILLAGE SUPER MARKET, INC., et al.,	:	
	:	
Plaintiffs,	:	
-against-	:	Adv. Pro. No. 20-01199 (JLG)
	:	
FAIRWAY BROADWAY LLC, et al.,	:	
	:	
Defendants.	:	
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**STIPULATION AND ORDER
REGARDING ORDER TO SHOW CAUSE**

WHEREAS, on July 30, 2020, Plaintiffs in the above-captioned adversary proceeding filed an adversary proceeding complaint (the “Complaint”) together with an Application for Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction seeking to restrict Defendants’ use of the Seller Marks (as defined in the Asset Purchase Agreement¹) that addressed Plaintiffs’ first, third, fifth, sixth, seventh, and eighth causes of action in the Complaint (the “Application”);

¹ On March 25, 2020, Defendants and plaintiff Village Super Market, Inc. (“Village”) executed the Asset Purchase Agreement, whereby, among other things, Village agreed to purchase all of Defendants’ rights, title, and interest in the Acquired Assets (as defined therein). This Court approved the Asset Purchase Agreement on April 20, 2020.

WHEREAS, on July 31, 2020, the Court issued an Order to Show Cause for a Preliminary Injunction, requiring that Defendants show cause before this Court as to why a preliminary injunction should not issue on August 7, 2020;

WHEREAS, at the request of Defendants, and with Plaintiffs' consent, the Court adjourned the hearing on the Order to Show Cause to August 14, 2020;

WHEREAS, at the further request of the parties to this adversary proceeding (the "Parties") and at the direction of the Court in response, the hearing on the Order to Show Cause was further adjourned to October 22, 2020;

WHEREAS, the FAIRWAY branded stores at the Red Hook (480-500 Van Brunt Street, Brooklyn, NY 11231) and Douglaston (242-02 61st Avenue, Douglaston, NY 11362) locations were sold to Bogopa Enterprises, Inc. pursuant to the *Order (I) Approving Asset Purchase Agreement Among The Debtors And Bogopa Enterprises, Inc.; (II) Authorizing Sale of Certain Of the Debtors' Assets Free and Clear of Liens, Claims, Interests, And Encumbrances; (III) Authorizing Assumption And Assignment of Certain Executory Contracts And Unexpired Leases In Connection Therewith; And (IV) Granting Related Relief* (Case No. 20-10161 (JLG) ECF No. 664), and Defendants represent that those stores permanently ceased operating as FAIRWAY branded stores on or about August 13, 2020;

WHEREAS, Defendants represent that the FAIRWAY branded store at the Plainview location (50 Manetto Hill Road, Plainview, NY 11803) closed on or about August 15, 2020;

WHEREAS, Defendants represent that the FAIRWAY branded store at the Stamford location (689-699 Canal Street, Stamford, CT 06902) closed on or about August 17, 2020;

WHEREAS, Defendants represent that the FAIRWAY branded store at the Westbury location (1258 Corporate Drive, Westbury, NY 11590) was also sold to Bogopa Enterprises, Inc.

at the hearing held before the Court on August 13, 2020, and permanently will cease operation as a FAIRWAY branded store no later than the close of business on September 5, 2020;

WHEREAS, Plaintiffs filed a First Amended Adversary Proceeding Complaint on September 14, 2020 (the “Amended Complaint”); and

WHEREAS, the Parties have reached an agreement which resolves the issues raised in the Application and moots the Order to Show Cause as set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, as represented by their respective counsel’s signatures below, as follows:

1. Defendants represent that, as of August 11, 2020:
 - a. All exterior signage showing the FRESH AND BEYOND SPECIALTY GROCER mark was removed at each of the five FAIRWAY branded store locations referenced above (collectively, the “FAIRWAY Branded Stores”);
 - b. All large in-store signage showing the FRESH AND BEYOND SPECIALTY GROCER mark was removed from the FAIRWAY Branded Stores;
 - c. The website at www.freshandbeyondspecialtyfoods.com was disabled.
3. Defendants represent that, as of August 18, 2020:
 - a. All other in-store signage and use of FRESH AND BEYOND SPECIALTY GROCER (including shelf talkers, smaller signs not previously removed, and product labels) was removed (or covered) at the FAIRWAY Branded Stores;
 - b. No advertising was created or distributed bearing the FRESH AND BEYOND SPECIALTY GROCER mark in or in connection with the FAIRWAY Branded Stores, including circulars, social media, and other promotional activities;

c. All other use of FRESH AND BEYOND SPECIALTY GROCER on or in connection with the FAIRWAY Branded Stores or any FAIRWAY mark permanently ceased; provided, however, that the Parties agree that Defendants may continue to sell excess inventory of certain olive oil and dried fruits and nuts (DFN) goods pre-labeled with the FRESH AND BEYOND SPECIALTY GROCER mark (but not any Seller Marks) to a third party (including Bogopa Enterprises, Inc.).

4. Defendants agree to permanently abide by the above restrictions going forward and will not use or resume usage of the FRESH AND BEYOND SPECIALTY GROCER mark in any FAIRWAY Branded Store or otherwise, except as set forth in Paragraph 3(c) above, and further agree that any future use by Authorized Users of the Seller Marks shall be limited to the Westbury location and shall comply with the terms of the Asset Purchase Agreement, and shall in any event end within 120 days of Closing (as defined in the Asset Purchase Agreement), i.e. by September 5, 2020.

5. The Parties each otherwise reserve all of their rights under the Asset Purchase Agreement.

6. The Parties acknowledge and agree that, as a result of this Stipulation, the trademark-related issues raised in the Application have been resolved, thereby mooted the injunctive relief components of certain causes of action in the Complaint (specifically, Plaintiffs' first, third, fifth, sixth, seventh, and eighth causes of action) and the Amended Complaint (specifically, Plaintiffs' first, fifth, seventh, eighth, ninth and tenth causes of action) filed by Plaintiffs in the above-captioned adversary proceeding.

IT IS SO ORDERED. The Order to Show Cause for a Preliminary Injunction [ECF 3]

shall be vacated.

Dated: October 5, 2020
New York, New York

/s/ James L. Garrity, Jr.
United States Bankruptcy Judge

STIPULATED AND AGREED:

For the Plaintiffs:

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